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OFFICE OF PETITIONS

In re Application of
Vollrath et al.
Application No. 09/967,008
Filed: September 28, 2001
Attorney Docket NO. 10808/203

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: DECISION HOLDING PTA REQUEST
: IN ABEYANCE UNTIL AFTER ISSUE
: DATE
:
:

This decision is in response to applicants' REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR 1.705(b)¹ timely filed on June 16, 2005 requesting that the Office adjust the PTA at the time of the mailing of the notice of allowance to at least 836 days.

The instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being held in abeyance until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Patentees are given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent within 3 years. A copy of this decision should accompany the request. Patentee may seek such reconsideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Petitioner is reminded that if an application is entitled to an adjustment under 35 U.S.C. 154(b)(1)(B), the entire period during which the application (except for periods excluded under 35 U.S.C. 154(b)(1)(B)(i)-(iii)), and not just the period beginning three years after the actual filing date of the application, is the period of delay under 35 U.S.C. 154(b)(1)(B) in determining whether periods of delay overlap under 35 U.S.C. 154(b)(2)(A). Thus, any days of delay for Office issuance of the patent more than 3 years after the filing date of the application which overlap with the days of patent term adjustment accorded prior to the issuance of the patent will not result in any additional patent term adjustment. See 35 U.S.C. 154(b)(1)(B), 35 U.S.C. 154(b)(2)(A), and 37 CFR § 1.703(f). See also *Revision of Patent Term Extension and Patent Term Adjustment Provisions; Final Rule*, 69 Fed. Reg. 21704 (April 22, 2004).

¹Issue fee paid on June 16, 2005.

After the mailing of this decision, this application will be forwarded to the Office of patent publications for a prompt issuance of the patent. The Office apologizes for any delays in this decision and notes that any delays in issuing the application within four months of the payment of the issue fee and all other requirements being satisfied will be added to the determination that is mailed with the issue notification letter.

The Office has assessed the \$200.00 fee required of this request. No additional fees are required in considering this matter.

Any questions should be directed to Kery A. Fries, Senior Legal Advisor, at 571-272-7757.

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